

**PORT OF RIDGEFIELD**  
**Clark County, Washington**  
**January 1, 1993 Through December 31, 1994**

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**Schedule Of Findings**

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1. The Port Lacked Adequate Internal Controls To Ensure The Golf Course Construction Was Authorized And Effectively Administered

Our review of the port's internal control procedures over administration of the \$2.8 million golf course construction project found the following deficiencies:

a. Progress payments were made without adequate documentation and approvals.

The original contracted cost of the course as awarded to the successful bidder was \$1,887,700. However, by August 1, 1994, total payment amounted to \$2,898,429. During the course of this project, the port paid three contract progress payments totaling \$137,541 without adequate documentation showing the work was completed; four payments totaling \$827,916 without proper approvals by the architect; and three payments totaling \$245,538 without documentation to support the amount or approvals from the architect. In addition, at the time the final payment was made, total payments (including final payment) overpaid the contract (and final billing summary) by \$6,000. At the time of our audit, the contractor provided a revised final billing which, along with all change orders, brought the total contract to the amount paid.

b. Retainage payments were released before certifications and affidavits were received.

Six retainage payments totaling \$265,771 were made before proper Washington Department of Revenue certification was received, and before the "Affidavit of Wages Paid" was submitted.

RCW 60.28.050 states in part:

Upon final acceptance of a contract, the . . . municipal officer charged with the duty of disbursement or payment of such contracts shall forthwith notify the department of revenue of the completion of contracts over \$20,000. Such officer shall not make any payment from the retainage percentage fund or release any retained percentage escrow account to any person, until he has received from the department of revenue a certificate that all taxes, increases and penalties due from the contractor, and all taxes due with respect to such contract have been paid in full . . . (Emphasis added.)

RCW 39.12.040 states in part:

Following the final acceptance of a public works project, it shall be the duty of the officer charged with the disbursement of public funds, to require the contractor . . . to submit to such officer an "Affidavit of Wages Paid" before the funds retained according to the provisions of

60.28.010 are released to the contractor. (Emphasis added.)

These internal control weaknesses and the unauthorized release of retainage payments are a result of both project magnitude and unfamiliarity with the requirements of municipal public works projects.

We recommend the port develop and implement internal controls over construction projects with careful attention given to contractual and legal compliance requirements.

2. The Port Did Not Comply With Requirements To Competitively Bid Construction Of The Golf Course Club House

The port awarded a contract to RSV Construction for construction of the golf course club house. Under RCW 53.08.120, this contract is subject to competitive bidding requirements.

This statute provides in part:

All such contracts for work, the estimated cost of which exceeds one hundred thousand dollars, shall be let at public bidding upon notice published in a newspaper of general circulation in the district . . . calling for sealed bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection.

During our review of procedures used in letting this contract, we found the following irregularities:

- a. Club house construction was split and the foundation phase was awarded outside the bid process.

In addition to the club house, the port also contracted for construction of an adjoining parking lot. While the parking lot construction project was properly awarded under the small works roster, the port improperly split the club house construction project and awarded the club house foundation and floor trusses in this same manner. Prior to awarding the parking lot contract, the port was aware of conditions requiring the foundation of the club house to be constructed directly upon completion of the parking lot to prevent erosion. Complete plans for the club house were available on March 25, 1994. The foundation was constructed in June 1994. However, rather than conducting public bidding for all phases of the club house construction and requiring a start date that would prevent the erosion, the port awarded construction of the foundation and floor trusses to a contractor from the small works roster. When RSV Construction was awarded the contract for the foundation in March 1994 they were given a complete copy of the club house plans. Further, in our review we found RSV had received bids from subcontractors for club house work as early as May 6, 1994, even though plans were not available through the initial invitation to bid until June 22, 1994.

There is a strong public policy in this state favoring competitive bidding laws. *Platt Electrical Supply, Inc. V. Seattle*, 16 Wn. App. 265, 269, 555 P.2d 421 (1976). While a public entity may desire to split a project into phases for budget or other reasons, each phase must be put out to public bid if the total estimated cost of the project exceeds the threshold required for competitive bidding. *National Electrical Contractors Association v. Bellevue*, 1 Wn. App. 81, 84, 459 P 2.d 420 (1969).

A port must competitively bid all projects the estimated cost of which exceeds \$100,000. The total estimated cost of all phases of the club house, including foundation and floor trusses, totaled \$568,190. In awarding the foundation phase of the club house construction through the small works roster, the port violated the requirement for competitive bidding and provided a single contractor with an advance copy of the plans.

- b. Plans and bid specifications on file were incomplete.

According to the published notice, "Plans and specifications" were available for examination at the Port of Ridgefield. However, bid information on file and supplied to contractors consisted of a set of blueprints and a checklist for

preparing bids. The materials provided did not contain bid specifications or the customary general requirements common to letting a contract for public bid. These general provisions include such items as completion time frames, liquidating damages, insurance requirements, sales taxes, permits, and warranties.

Pursuant to RCW 53.08.120, when competitive bidding is required, plans and bid specifications must be on file for public inspection. Because complete bid specifications were not on file as required, persons desiring to bid on the project were not provided with information necessary to provide a fair basis for competitive bidding.

- c. The contract awarded was not substantially in accordance with the terms of the invitation to bid.

On August 2, 1994, RSV Construction was determined by the port to be the lowest responsible bidder on the club house construction project. However, the contract for this project was not executed until November 28, 1994, after subsequent negotiations between the port and RSV Construction. This contract varied significantly from the plans that had been on file for bidding purposes, including two additional items totaling \$99,007, or 27 percent of the original project. These items were not part of the original project and were made to alter the floor plan of the building. Actual construction on this phase of the project did not begin until January 1995.

A public contract awarded pursuant to competitive bidding procedures must be substantially in accordance with the terms of the invitation to bid. Platt Electric, 16 WN. App. at 277-79. "If after advertising for and receiving sealed proposals for the doing of public work for a municipality, none of the bids is found satisfactory, the public body has no authority to favor one of the bidders by negotiations with him privately, changing the scope of the work to be done . . . ." Platt Electric, 16 Wn. App. at 271. Whether competitive bidding laws are permitted to be circumvented, or whether a bidder is permitted through negotiation to change his bid, the risk involved is precisely the same ) the doors to possible fraud, collusion, and favoritism are opened. Platt Electric, 16 Wn. App. at 274.

By privately negotiating and awarding a contract significantly different from the accepted bid, the port did not follow the competitive bidding process.

These violations apparently occurred because port officials had several projects occurring simultaneously and were not fully aware of all elements of competitive bidding.

We recommend the port establish and implement procedures to ensure compliance with competitive bidding requirements.

3. The Port Failed To Properly Report Manager's Pay To Appropriate State And Federal Agencies

Former manager Gene Schmitz began work at the port September 1, 1992. The port contracted for his services through Pioneer Enterprises, Inc., a corporation formed by Gene Schmitz on November 5, 1992. Under the contract, the district paid the corporation for his services as port manager until his service terminated on December 31, 1994. As an employee of the corporation, any payroll tax reporting for Schmitz's services would be the responsibility of Pioneer Enterprises, Inc.

However, according to Secretary of State records, for 12 months of the 28 month contract period, there was no legal corporation. Absent the corporation, the port should use RCW and IRS tests of independence to determine whether an individual is an employee or an independent contractor.

According to RCW 50.04.140, remuneration for services rendered by an individual is reportable employment unless, and until, it can be shown that the individual meets all three of the following tests of independence:

(a) Such individual has been and will continue to be free from control and direction over the performance of such service, both under his or her contract of service and in fact; and

(b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service . . . .

Internal Revenue Service (IRS), Circular E, Publication 15, also provides that if the employer "has the legal right to control the method and result of the service," the individual is an employee.

In our opinion, there is significant doubt as to whether Gene Schmitz meets the "independence" criteria for the two months prior to the corporation being formed and the ten months after its involuntary dissolution on February 22, 1994.

According to port officials, Schmitz did not want to be considered an employee of the district, but preferred to contract his services to the port through Pioneer Enterprises, Inc.

We recommend the port contact the Washington Employment Security Department for determination of any amendments to state and federal payroll reports which may be necessary to accurately reflect Schmitz's salary during the time in question. In addition, we recommend the district carefully review potential contractors for independence measured against the criteria cited above, including verification of valid incorporation, before paying them outside the payroll system.